IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. 004770.00357)

In re U.S. Patent Application of: Timo ELOMAA, et al.	)))	Group Art Unit: 2132
Application No. 10/023,735	))	Examiner: N. Khomassi
Filed: December 21, 2001	))	Confirmation No.: 5096
For: DISTRIBUTION OF CONTENT	))	

Commissioner of Patents
P.O. Box 1450
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APPEAL BRIEF

This constitutes applicants' brief on appeal. Moreover, although the undersigned does not deem the originally filed appeal brief to be defective, this document responds to the Office Action of January 8, 2007. The information specified by 37 C.F.R. 41.37 (c)(1) is provided hereunder.

As an initial matter, the Examiner is thanked for the careful analysis that has been given to the claims of the present application and to the cited art. Nonetheless, the Examiner is mistaken in rejecting the claims of the present application. For the reasons that follow, the Examiner's rejection should be reversed.

Real Party In Interest

The real party in interest in this application is Nokia Corporation, the assignee.

Related Appeals and Interferences

None known.

Status of Claims

Claims 1-16, 18-30, and 32-40 are pending in the application. All of the foregoing claims stand as rejected, and all are appealed. Claims 17 and 31 are canceled. Additionally, the Claim Appendix provides this status identifier information for each claim in the application (rejected or canceled).

The independent claims in this application are 1, 6, 9, 12, 15, 16, 18, 32, and 35.

Status of Amendments

No amendments have been filed subsequent to final rejection.

Summary of Claimed Subject Matter

The present application contemplates, in some embodiments, a content distribution control system in which different levels of control are placed on content that is distributed in the system.

The content may be, for instance, a ring tone. The control may be an indicia that signifies different levels of protection for the ringtone, which as the specification teaches, "will place a different level of restriction on the use a recipient may make of the content 32." Page 7, lines 718. For instance, as depicted in Fig. 5A, the recipient of the ring tone is permitted to play the ring tone, but to take no other actions with respect thereto. As set forth at page 8, lines 29-31, "[s]uch a copyright class would allow a user to access content for promotional or investigatory purposes only." In Fig. 5A, there is no option to retain the content for later local use or to forward it.

In Fig. 5B, a second class of copyright control has been placed upon the content (see page 9, first full paragraph). The user now has the option to save the content. The user does not, however, have the option to forward the content to another terminal.

Fig. 5C represents a terminal in which a third class of copyright control has been placed upon the content (see page 9, second full paragraph). The user now has the option to forward, save, play, or erase the content.

The claims are directed variously to the above-described system, to a terminal and to computer-readable media useful in connection with such system. Claim 1, and those claims that depend therefrom, are directed toward a content distribution control system. The control system includes a network 1 (*see* page 5, line 28 and Fig. 1) that has at least one terminal connected thereto (page 5, line 19; Fig. 1, terminal 3). The system includes a content creation tool (*see*, *e.g.*, page 6, line 11 et. seq. and note Fig. 1, content providers 22). The content creation tool is operable to assign indicia representative of a pre-determined level of control of the content. *See* page 6, line 29, et seq. and Fig. 3, box 51. The content is made available to the network, and the terminal is responsive to the indicia to permit operations in relation thereto. As discussed at page 8, line 26 et. seq. and shown in Figs. 5A through 5C, the terminal 3 has a display 15 that permits various operations, depending on the type of control that have been placed on the content.

Claim 6 specifies a terminal. The terminal has a first memory into which content is receivable (*see generally* page 5, last full paragraph and Fig. 3). The terminal has a user interface (Fig. 3, no. 19) operatively associated with the memories of the terminal, such that a set of operations of the user interface is permitted by reference to the content (*see generally* above discussion). At least one of the operations permitted by the content is a transfer of the content to a second memory of the terminal.

Claims 9 and 12 specify respectively methods for creating content and receiving content. In claim 9, a level of control appropriate to the content is determined, and indicia is assigned to the content in accordance with the determination. In claim 12, a list of allowable operations is generated in relation to the content (*see* Fig. 5).

Claims 15 and 16 each are directed toward a computer readable media. Claim 15 is directed to a medium having code for creating content for controlled distribution, and claim 16 is directed towards a computer readable medium having code for receiving content. *See generally* above discussion.

Claim 18 specifies a user interface for a terminal (*see* Fig. 3, terminal 3 and user interface 19 and accompanying text).

Finally, claim 32 specifies a method of controlling distribution of content, and claim 35 specifies a method of receiving content the distribution of which is to be controlled. *See generally* above discussion.

A listing of the independent claims, mapped to the specification, is provided below. No representation is made that the referenced portions of the specification are the exclusive point of citation for the referenced subject matter. Reference is made to the preceding paragraphs for further discussion of exemplary embodiments of the present invention.

1.   A content distribution control system **[see, e.g., p, 2 ln. 12]** comprises a network **[id.]** having at least one terminal connected thereto **[id. ln. 13]**, a content creation tool operable to assign indicia representative of a pre-determined level of control of said content **[id.]**, said content being subsequently made available to said network and said at least one terminal being responsive to said indicia to permit operations in relation to said content received from said network **[id. ln. 14-17]**.

6.   A terminal **[see, e.g., p. 3 ln. 7]** having a first memory into which content is receivable, a second memory and a user interface operatively associated with said memories, **[id. ln. 7-9]** such that a set of operations of said user interface in relation to said content received into said first memory is permitted by reference to said content **[id. ln. 9-11]**, at least one of said operations permitted by said content being a transfer of said content to said second memory, wherein a set of operations of said user interface in relation to said same content when received into said second memory is similarly permitted by reference to said content **[id. ln. 11-15]**.

9.   A method of creating content for controlled distribution **[p. 3 ln. 27]** comprises defining indicia representative of respective levels of control of content **[id. ln. 28-29]**, determining a level of control appropriate to said content and assigning indicia to said content in accordance with said determination **[id. ln. 29-31]**.

12.   A method of receiving content including indicia representative of allowable operations in respect of said content **[p. 4 ln. 17-19]**, comprises receiving said content into a first

memory **[id. ln. 19-20]**, generating a list of allowable operations in relation to said content from said indicia and displaying said list to a user **[id. ln. 20-21]**.

15. A computer readable medium **[e.g. one of the terminals 3, Fig. 2]** having stored thereon computer executable code for execution when loaded on a computer **[id.]**, wherein the computer is operable in accordance with said code for creating content for controlled distribution via performing steps comprising:

defining indicia representative of respective levels of control of content **[p. 3 ln. 28-29]**;

determining a level of control appropriate to said content **[p. 3 ln. 29-30]**; and

assigning indicia to said content in accordance with said determination **[p. 3 ln. 30-31]**.

16. A computer readable medium **[e.g. one of the terminals 3, Fig. 2]** having stored thereon computer executable code for execution when loaded on a computer **[id.]**, wherein the computer is operable in accordance with said code for receiving content including indicia representative of allowable operations in respect of said content **[p. 4 ln. 17-18]** via performing steps comprising:

receiving said content into a first memory **[p. 4 ln. 19-20]**;

generating a list of allowable operations in relation to said content from said indicia **[p. 4 ln. 20-21]**; and

displaying said list to a user **[p. 4 ln. 21]**.

18. A user interface for a terminal **[Fig. 2; p. 5 ln. 32]**, wherein the interface is operable in accordance with an indicia associated with content received by the terminal, said indicia being representative of a pre-determined level of control of content, to permit operations available to a user of said terminal in relation to said content **[see, e.g., p. 7 ln. 13-22]**, said

operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage **[p. 9 ln. 19-24]**.

     32.   A method of controlling distribution of content, comprising the steps of:

     determining a level of distribution of content to be distributed, said level representing permitted uses of said content **[p. 7 ln. 24-29]**; and

     controlling distribution of said content by setting an indicia, corresponding to said content, to a state indicative of said level determined by said determining step **[p. 8 ln. 14 et seq.]**.

     35.   A method of receiving content the distribution of which is to be controlled, comprising the steps of:

     receiving content and indicia corresponding to said content, said indicia being indicative of a level of distribution of said content, wherein said level represents permitted uses of said content **[passim; see p. 6 ln. 29 et seq.]**; and

     in response to said indicia corresponding to said content, controlling use of said content such that said use is one of said permitted uses **[p. 7 ln. 13-26]**.

Grounds of Rejection to be Reviewed on Appeal

The sole rejection is a rejection under 35 U.S.C. §102(e) over U.S. Pat. No. 6,912,652 (Ito, et al.) ("Ito"). Ito purports to disclose a method for distributing digital content. In Ito, the digital content is said to include an identification imprint. The examiner has confused the ID imprinting of Ito with the subject matter claimed in the various claims of the present application. Accordingly, the sole ground of rejection to be reviewed is whether the Examiner has erred in rejecting the claims over Ito.

Argument

The network and method that Ito purports to disclose is different from applicant's claimed invention. Ito is directed to mechanisms for tracking digital content. Ito teaches "loading a content into an information terminal where the content is used and imprinting an ID…into a predetermined location…of the content." Ito, col. 1, lines 55-57. As Ito explains, "[a] user who reproduces illegal copies of the content is identified with the ID information imprinted therein."

In Ito, content is viewed in a viewer on a PC (see col. 3, line 31 et. seq.). The Examiner relies principally on the following passage in Ito:

> [A]s a measure for preventing use of content before ID imprinting…the system is designed to as to be interrupted or reset if a read access is made to the memory area containing a content without an ID. Once an ID is imprinted, this protection is removed, enabling the image to be used as desired.

Col. 3, lines 44-52. Thus, the only control function of the ID is to allow or disallow access to the content – if the ID is present, access to the content is enabled, but if the ID is not present, access to the content is not enabled.

This is different from the subject matter claimed in the present application. For various reasons, as discussed below, all of the claims are patentable over Ito.

First Argument -- Applicable To All Claims

The claims specify that plural levels of control are accorded to content based on the indicia and/or that plural operations are permitted based on the indicia. For instance, with respect to claim 1, this claim specifies that the content creation tool is operable to assigned indicia representative of pre-determined level of control of the content, and a terminal that is responsive to the indicia to permit operations (i.e. more than one operation) in relation to the content received from the network. For example with reference to Figs. 5A-C, the levels of control include respectively (1) play only, (2) play and save, or (3) play, save, forward, erase. Ito fails to disclose a pre-determined level of control, and also fails to disclose that the terminal is responsive to permit such operations. Ito states merely that access to the content is either granted

or denied, based on the presence or absence of the ID. Ito does not disclose anything with respect to multiple operations in relation to the content.

Claim 6 is patentable for the same reason. Specifically, in claim 6, a <u>set of operations</u> of a user interface in relation to content received is permitted by reference to the content. Ito does not disclose this feature. The Examiner, in rejecting claim 6, points to Ito at col. 3, lines 21-22. But this passage states only as follows:

> The ID is imprinted in the content when the viewer decodes the content (S2). After the ID is imprinted, use of the content such as for displaying or copying is enabled.

This does not constitute a disclosure or suggestion of multiple operations with respect to the same content. Rather, this passage states only that access to the content (for one of any number of purposes) is either granted or denied. In other words, Ito does not teach that one ID type is used for displaying and another for copying; rather, Ito teaches only that access may or may not be granted.

In claim 9, "determining a level of control appropriate to said content" is not taught by Ito. Ito does not contain a disclosure of a level of control appropriate for the content. Again, Ito discloses only the grant or denial of access. Claim 12 specifies content including "indicia representative of allowable operations in respect of said content." Yet again, Ito fails to disclose plural allowable operations; rather Ito discloses only to grant or deny access to the content.

Claims 15, 16, 18, 32, and 35, and all of the dependent claims are allowable for similar reasons. See claim 15 ("determining a level of control appropriate to said content"); claim 16 ("indicia representative of allowable operations in respect of such content"); claim 18 ("indicia being representative of a pre-determined level of control of said content"); claim 32 ("setting an indicia, corresponding to said content, to a state indicative of such level"); claim 35 ("indicia being indicative of a level of distribution of said content").

Second Argument -- Applicable to Claims 5, 6, 7, 8, 13, 14, 18, 22-25, 29, and 30

Many claims in the application are patentable for separate reasons. For instance, claim 5 specifies that, in the system of claim 1, the terminal includes a user interface that permits

operations available to a user in relation to the content. One of the operations includes the transfer of content from volatile storage, into which content is received from the network, to user accessible storage. Where is this teaching in Ito? The Examiner, in rejecting this claim, cites col. 3, lines 49-59. This passage, however, states only as follows:

> As a measure for preventing use of content before ID imprinting, for instance, a memory area in the PC 4 that stores a content without an ID imprinted therein is protected by the ID imprinter 18 so that reading of such a content is prevented. Specifically, the system is designed so as to be interrupted or reset if a read access is made to the memory area containing a content without an ID. Once an ID is imprinted, this protection is removed, enabling the image to be used as desired.

This says nothing about volatile memory or user accessible memory. Rather, there is only one memory in Ito. Access to that memory is granted or denied based on the presence or absence of the ID.

Claim 6 is patentable for similar reasons. This claim specifies that a terminal that has first memory and a second memory, content being received into first memory. One of the operations permitted is a transfer of the content to the second memory. Again, the Examiner points to col. 3, lines 49-59 of Ito, and again, this passage says nothing as to first and second memories or transfer of content therebetween.

All of the claims that depend from claims 5 or 6, as well as the other claims subject to this argument, are patentable for this additional reason.

Third Argument —-Applicable to Claims 12-14, 16, 29, and 30

Claim 12 specifies "generating a list of allowable operations in relation to said content," and is patentable over Ito for this additional reason. Ito says nothing about a "list of allowable operations." Indeed, it is evident that such a list would be incompatible with Ito's teachings. The Examiner points to col. 3, lines 21-22, but this passage is silent as to any list. The Examiner also points to col. 8, lines 12-18, but this passage merely states that ID imprinting may be carried out at one of two locations, either at the content provider or at the information terminals where the content is used. Again, this says nothing about a "list of allowable operations." Those claims that depend from claim 12 are allowable for this additional reason. Claim 16 (which

specifies "generating a list of allowable operations") and those claims that depend from claim 16 likewise are allowable for this separate reason.

Fourth Argument -- Applicable to Claims 39 and 40

Finally, it is noted that claim 39 specifies that the content forms a single message known as a short message (SM). The Examiner points to the disclosure in Ito of a PDA at col. 3, first paragraph. The Examiner asserts that this PDA is "equipped to receive short messages." This is a creation of the Examiner, not a disclosure of Ito. Ito is silent as to short messages.

Conclusion

In summary, all of the claims are patentable over Ito for at least one reason, and many claims are patentable over Ito for plural reasons. For example claim 29, which depends from claim 16, specifies, in connection with a computer-readable medium, "indicia representative of allowable operations" (not shown by Ito); "generating a list of allowable operations" (also not shown by Ito); and transfer of content to a second memory (yet again, not shown by Ito).

For these reasons, the rejection entered in the Final Rejection cannot stand. Reversal is respectfully solicited.

Respectfully submitted,

Date: January 18, 2007

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Claims Appendix

Listing of Claims:

1.   (Rejected)   A content distribution control system comprises a network having at least one terminal connected thereto, a content creation tool operable to assign indicia representative of a pre-determined level of control of said content, said content being subsequently made available to said network and said at least one terminal being responsive to said indicia to permit operations in relation to said content received from said network.

2.   (Rejected)   A system as claimed in claim 1, including a communications link providing said tool with access to said network.

3.   (Rejected)   A system as claimed in claim 1, wherein content including said indicia is placed in a payload portion of a datagram.

4.   (Rejected)   A system as claimed in claim 1, wherein said indicia is encrypted.

5.   (Rejected)   A system as claimed in claim 1, wherein said terminal includes a user interface operable in accordance with said indicia to permit operations available to a user of said terminal in relation to said content, said operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage.

6.   (Rejected)   A terminal having a first memory into which content is receivable, a second memory and a user interface operatively associated with said memories, such that a set of operations of said user interface in relation to said content received into said first memory is permitted by reference to said content, at least one of said operations permitted by said content being a transfer of said content to said second memory, wherein a set of operations of said user

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interface in relation to said same content when received into said second memory is similarly permitted by reference to said content.

7.   (Rejected)   A terminal as claimed in claim 6, further wherein said user interface is further operable to identify indicia associated with said content said permitted set of operations being determined therefrom.

8.   (Rejected)   A terminal as claimed in claim 6, wherein said first memory provides temporary storage of said content.

9.   (Rejected)   A method of creating content for controlled distribution comprises defining indicia representative of respective levels of control of content, determining a level of control appropriate to said content and assigning indicia to said content in accordance with said determination.

10.   (Rejected)   A method as claimed in claim 9, wherein said control permits at least one of the following operations, namely viewing, storing, deleting and forwarding of said content.

11.   (Rejected)   A method as claimed in claim 9, wherein content including said indicia is placed in a payload portion of a datagram.

12.   (Rejected)   A method of receiving content including indicia representative of allowable operations in respect of said content, comprises receiving said content into a first memory, generating a list of allowable operations in relation to said content from said indicia and displaying said list to a user.

13.   (Rejected)   A method as claimed in claim 12, wherein transfer of said content to a second memory is included in said list of allowable operations.

14.   (Rejected)   A method as claimed in claim 13, wherein said first and second memories are respectively volatile and non-volatile.

15. (Rejected) A computer readable medium having stored thereon computer executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code for creating content for controlled distribution via performing steps comprising:

> defining indicia representative of respective levels of control of content;
>
> determining a level of control appropriate to said content; and
>
> assigning indicia to said content in accordance with said determination.

16. (Rejected) A computer readable medium having stored thereon computer executable code for execution when loaded on a computer, wherein the computer is operable in accordance with said code for receiving content including indicia representative of allowable operations in respect of said content via performing steps comprising:

> receiving said content into a first memory;
>
> generating a list of allowable operations in relation to said content from said indicia; and
>
> displaying said list to a user.

17. (Cancelled).

18. (Rejected) A user interface for a terminal, wherein the interface is operable in accordance with an indicia associated with content received by the terminal, said indicia being representative of a pre-determined level of control of content, to permit operations available to a user of said terminal in relation to said content, said operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage.

19. (Rejected) A system as claimed in Claim 2, wherein content including said indicia is placed in a payload portion of a datagram.

20. (Rejected) A system as claimed in claim 2, wherein said indicia is encrypted.

21. (Rejected) A system as claimed in claim 3, wherein said indicia is encrypted.

22.   (Rejected)   A system as claimed in claim 2, wherein said terminal includes a user interface operable in accordance with said indicia to permit operations available to a user of said terminal in relation to said content, said operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage.

23.   (Rejected)   A system as claimed in claim 3, wherein said terminal includes a user interface operable in accordance with said indicia to permit operations available to a user of said terminal in relation to said content, said operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage.

24.   (Rejected)   A system as claimed in claim 4, wherein said terminal includes a user interface operable in accordance with said indicia to permit operations available to a user of said terminal in relation to said content, said operations including the transfer of said content from volatile storage, into which content is received from said network, to user accessible storage.

25.   (Rejected)   A terminal as claimed in Claim 7, wherein said first memory provides temporary storage of said content.

26.   (Rejected)   A method as claimed in Claim 10, wherein content including said indicia is placed in a payload portion of a datagram.

27.   (Rejected)   The computer readable medium according to claim 15, wherein said control permits at least one of the following operations, namely viewing, storing, deleting and forwarding of said content.

28.   (Rejected)   The computer readable medium according to claim 15, wherein content including said indicia is placed in a payload portion of a datagram.

29. (Rejected) The computer readable medium according to claim 16, wherein transfer of said content to a second memory is included in said list of allowable operations.

30. (Rejected) The computer readable medium according to claim 16, wherein said first and second memories are respectively volatile and non-volatile.

31. (Cancelled).

32. (Rejected) A method of controlling distribution of content, comprising the steps of:

determining a level of distribution of content to be distributed, said level representing permitted uses of said content; and

controlling distribution of said content by setting an indicia, corresponding to said content, to a state indicative of said level determined by said determining step.

33. (Rejected) A method as claimed in claim 32, wherein said content to be distributed and said indicia are included in a datagram.

34. ((Rejected) A method as claimed in claim 33, wherein said indicia is a bit included in said datagram that has been set to a predetermined state corresponding to said level.

35. (Rejected) A method of receiving content the distribution of which is to be controlled, comprising the steps of:

receiving content and indicia corresponding to said content, said indicia being indicative of a level of distribution of said content, wherein said level represents permitted uses of said content; and

in response to said indicia corresponding to said content, controlling use of said content such that said use is one of said permitted uses.

36. (Rejected) A method as claimed in claim 35, wherein said content and said indicia corresponding to said content are included in a datagram.

37.   (Rejected)   A method as claimed in claim 36, wherein said indicia corresponding to content is a bit included in said datagram that has been set to a predetermined state.

38.   (Rejected)   The method of claim 11, wherein the content forms a single message.

39.   (Rejected)   The method of claim 38, wherein the single message includes a message known as a short message (SM).

40.   (Rejected)   The method of claim 38, wherein said datagram includes the entire single message.

Evidence Appendix

None.

Related Proceedings Appendix

None.